IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 13557 of 2005

Between:

Shahnaz Siraj, W/o Syed Sirajuddin Quadri,
R/o 11-2-227 and 228, Nampally, Hyderabad.

..... PETITIONER

AND

1 The Commissioner, Municipal Corporation of Hyderabad,

Hyderabad.
2 Assistant City Planner, Circle 4, Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad.
3 Secretary, A.P. Housing Board , M.J. Road, Hyderabad.
4 Fatima Unnisa, W/o Khaja Sharfuddin,
R/o 11-2-250, Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ declaring that the inaction on the part of the 1st respondent in not preventing the 4th respondent from proceeding with construction over the lung space area situated between the house of the petitioner and the 4th respondent despite the letter of the 3rd respondent dated 19-10-2004, is arbitrary and illegal and direct Respondents 1 and 2 to remove the unauthorized construction made by the 4th respondent over the said lung space area and prevent the 4th respondent from making any constructions over the said lung space area and grant such other relief as it deems fit in the circumstances of the case.

Counsel for the Petitioner:MR.V.VENKATARAMANA

Counsel for the Respondents 1 to 3: MR.RAMA RAO GHANTA

Counsel for the Respondent No.4: Mr. J. Prabhakar

The Court made the following :

ORAL ORDER:

The present writ petition has been filed to issue a Writ of Mandamus declaring that the inaction on the part of the 1st respondent in not preventing the 4th respondent from proceeding with construction over the lung space area situated between the house of the petitioner and the 4th respondent, despite the letter of the 3rd respondent dated 19-10-2004, is arbitrary and illegal and direct Respondents 1 and 2 to remove the unauthorized construction made by the 4th respondent over the said lung space area and prevent the 4th respondent from making any constructions over the said lung space area.

It is the case of the petitioner that she is the owner of house bearing No.11-2-227 and 228, Nampally, over an extent of 118 Sq.yds, and after obtaining necessary permission from the Municipal authorities, she has constructed residential house consisting of ground plus first floor in the year 1998 in accordance with the sanctioned plan. While so, the 2nd respondent issued notice dated 17.2.2005, alleging that the petitioner has encroached upon the common passage in front of her house towards southern side, and to remove the said illegal structures. The petitioner filed W.P.No.3009 of 2005, and got a stay order dated 18.2.2005.

In this writ petition, the petitioner mainly challenges the inaction on the part of the respondents 1 and 2 in not taking any steps to stop the encroachment activity being carried on by the 4th respondent in an open lung space belonging to the 3rd respondent, situated in between the house of the petitioner and that of the 4th respondent. It is also stated that the 3rd respondent-A.P. Housing Board had also issued notice dated 19.10.2004 to the 4th respondent to stop the construction and also addressed a letter to the 1st respondent on the same day to take action on the alleged illegal constructions. Since no action has been forthcoming from the respondents 1 and 2, the present writ petition has been preferred by the petitioner.

In the counter affidavit filed on behalf of the respondents 1 and 2, the respondents admitted that the 4th respondent had encroached upon the lung space and accordingly issued notice dated 27.10.2004 to the 4th respondent. It is further stated that since no notice is required for the encroachments made on the open spaces, the respondents addressed a letter to the 3rd respondent on 27.10.2004 requesting to fix a date for joint action to demolish the structure constructed by the 4th respondent. When there was no response from the 3rd respondent, the respondents 1 and 2 carried the demolition activity by pulling down a part of the illegal constructions. Since the 4th respondent obtained injunction order in O.S.No.6351 of 2004, on the file of the IX Junior Civil Judge, City Civil Court, Hyderabad, on 29.10.2004, they could not take any further action in this regard. It is further submitted that they would take action as soon as the said order of injunction is vacated or modified.

In that view of the matter, as there is an injunction order against the respondents, this writ petition cannot be entertained and the same is accordingly dismissed. However, it is open to the petitioner to implead herself as a party respondent in the suit pending before the court below and get the injunction vacated,

in order to proceed against the 4th respondent. No order as to costs.

12.7.2005

CVM

To,

1 The Commissioner, Municipal Corporation of Hyderabad,

Hyderabad.
2 Assistant City Planner, Circle 4, Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad.
3 Secretary, A.P. Housing Board , M.J. Road, Hyderabad.
4 2 CD copies.